

REMARKS

The Office rejected Claims 1-13 on the ground of non-statutory obviousness -type double patenting over 12 co-pending applications as outlined on pages 2-18 of the Office Action. These co-pending applications include Application Nos.: 10/587,997 filed August 1, 2006, 11/576,646 filed April 4, 2007, 11/577,009 filed April 11, 2007, 11/577,587 filed April 19, 2007, 11/577,590 filed April 19, 2007, 11/632,711 filed January 18, 2007, 11/659,506 filed February 6, 2007, 11/659,625 filed February 7, 2007, 11/813,638 filed July 10, 2007, 11/813,833 filed July 12, 2007, 11/996,489 filed January 22, 2008, and 11/815,238 filed August 1, 2007.

Applicants note that the present application was filed August 1, 2006 which is on or before the filing date of the applications listed above. If the provisional non-statutory obviousness-type double patenting rejections are the only rejections remaining in the earlier filed application, Applicants respectfully request that the Office withdraw the obviousness-type double patenting rejections per MPEP §804(B)(1), first paragraph.

The Office has also rejected Claims 1-13 under 35 U.S.C. §103(a) over the combination of Gareiss (U.S. 5,712,336) and Dvornic (U.S. 2002/0161113).

Gareiss describes flame proofed thermoplastic molding material that contain a thermoplastic polyester. Dvornic describes hyperbranched polymers. Applicants note that while Dvornic provides a long list of possible polymers including a polyester, Dvornic does not make any hyperbranched polyester polymers; and therefore, there is no hyperbranched polyester enablement in Dvornic. Applicants respectfully submit this lack of enablement makes Dvornic unsuitable as a reference.

Applicants note that the claimed thermoplastic molding composition contains a blend of a distinct thermoplastic polyester and a distinct highly branched or hyperbranched polyester. The Office has suggested that it would have been obvious to blend the polymer in Gareiss with the polymer in Dvornic because “[o]ne would have been motivated to do so in order to receive the expected benefit of controlling and changing the ease of processability of the polyester material (Dvornic [0002]). Applicants submit that Dvornic says nothing about controlling and changing the processability of polyester with blends of a polyester and a hyperbranched polyester. Dvornic only says that hyperbranched polyesters “have a lower viscosity and better shear

thinning properties for coating applications than similar compositions containing a chemically similar linear polyester . . .” Dvornic is not discussing blends of thermoplastic polymers and hyperbranched polymers but just hyperbranched polymers. There is no teaching or suggestion found in Dvornic or Gareiss that blends provide molding compositions which have good flowability together with good mechanical properties (see page 2 of the specification). Since there is no teaching or suggestion found in cited references to blend those polymers for the purposes described above, the claimed composition would not have been rendered unpatentable over these references. Further Applicants note that the references do not teach or suggest all the recitations of the claim method. For these reasons alone, Applicants respectfully request that the Office withdraw the rejections of claims 1-13 under 35 U.S.C. §103(a) over Gareiss and Dvornic.

The Office suggests that the claimed composition is a result of an optimum value of a result effective variable and that concentrations have been disclosed that are overlapping with the claimed composition. Applicants submit that the references provide no guidance as to what result effect variable is achieved, i.e., good flowability with good mechanical properties. The only place this result is discussed is the Applicants’ own specification. In addition, the references do not recite concentrations at all. How can this be optimized from the reference if they do not list any ranges at all? Again ranges listed are from the Applicants own specification.

Finally, Applicants note that all the obviousness rejections and the obviousness-type double patenting rejections have been rebutted by a showing of unexpected or superior results (MPEP 2144.09(VII)).

Applicants direct the Office to Tables 4 and 5 of the specification. In Table 4, the properties of polyester compositions within the claimed range (Examples 12-17) are compared to a polyester composition outside the claimed range (this composition does not contain a hyperbranched polyester). Applicants direct the Office to the strength and flowability properties of these compositions. The comparative Example (1C) has a much lower flow spiral (35) compared to the inventive compositions (42-46). At the same time the inventive samples show comparable mechanical properties such as tensile, modulus of elasticity and impact strength compared to the comparative example. The inventive examples have superior flow characteristics while maintaining mechanical properties.

Table 5 lists 3 polymer blends containing a polyester and a hyperbranched polyester which is outside the claimed range (A_xB_y Type with $X = 1.0$ and $Y = 2.0$). Inspection of Table 5 shows that while these polymer blends have good flow spiral (43-46) they have lower mechanical properties such as notched impact (2-2.5) versus the inventive examples (5-6.1 for samples 12-17 in Table 4).

These results show that the claimed polymer blend has unexpected or superior properties and these results rebut any *prima facie* case of obviousness. Accordingly, Applicants respectfully request that the Office withdraw the obviousness rejections under 35 U.S.C. §103(a) and under the judicially created obviousness-type double patenting rejections.

In light of the remarks above, Applicants submit that the application is in condition for allowance. Favorable reconsideration is respectfully requested.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 22-0185, under Order No. 12810-00333-US1 from which the undersigned is authorized to draw.

Dated: September 10, 2008

Respectfully submitted,

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